IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.453 OF 2004

Akaram Harun Hawaldar .. Appellant

Versus

Adam Ahmad Havaldar & Ors. .. Respondents

Mr.Abhay D.Parab for appellant

CORAM : P.V.KAKADE, J.

DATE : 5TH JULY, 2005.

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by Joint District Judge, Ratnagiri dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Ratnagiri dismissing the suit for partition and separate possession of the suit properties.

2. I have heard the learned counsel for the appellant. Perused the record.

3. The plaintiff filed the suit for partition and separate possession of the suit property on the ground that the suit property was joint family property and no partitions were effected of the said property. The defendant no.14 contested the suit on the ground that the partitions were already effected and there was no land available for partitions. Moreover, it was also challenged that the properties were belonging to the joint family and hence the suit was sought to be dismissed.

4. The learned trial judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had failed to prove that the properties mentioned in Schedule "B" were joint family properties of the plaintiff and the defendants and plaintiff had 1/15 share therein and as such he was non suited.

5. The appeal was carried to the Joint District Judge, Ratnagiri. The learned District Judge after hearing both the parties came to the conclusion that the

evidence on record was not sufficient to hold that the properties were joint family properties and as such the appeal came to be dismissed confirming the lower court's order.

6. At the outset it may be noted that there is absolutely no substantial question of law involved in this appeal. The only question appears to be involved is whether there is sufficient evidence on record to hold that the property in question belongs to joint family property and whether the plaintiff had 1/15th share therein. However, there is absolutely no evidence on record in support of such version and perusal of the judgment of the lower appellate court judge shows that he has rightly appreciated the available evidence on record in order to raise presumption that the properties were already divided and there was absolutely no evidence to show that the properties were belonged to joint family.

7. In these circumstances I do not see any reason to interfere in the concurrent findings recorded by both the courts below. In the result the appeal stands dismissed.